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OFFICE OF PETITIONS

In re Application of :
Richard Calvin Mintz :
Application No. 10/698,538 : ON PETITION
Filed: October 31, 2003 :
Attorney Docket No.: 25165-03 :

This is a decision on the petition filed March 1, 2004, titled "Petition to Afford a Filing Date Under 37 CFR 1.10 and response to Notice of Omitted Item(s) in a Nonprovisional Application filed under 37 CFR 1.53(b)." Petitioner is advised that the petition will be treated under 37 CFR 1.182 as a request to vacate the Notice of Omitted Items mailed February 4, 2004, in the above-cited application.

The petition is **dismissed**.

On October 31, 2003, the above-identified application was filed. However, on February 4, 2004, the Office of Initial Patent Examination mailed a "Notice to of Omitted Items in Nonprovisional Application," stating that application had been accorded a filing date of October 31, 2003, and advising applicant that Figures 1a-b as described in the specification appeared to have been omitted. The notice allowed a two month period for reply.

In response, on March 1, 2004, applicant filed the present petition. Petitioner explains that Figures 1a-b were not missing, rather that the specification contained a typographical error in mentioning the subject figures. Applicant filed a preliminary amendment with the instant petition in an effort to correct the error.

Because the specification described Figures 1a-b and those figures were not found among the drawings, the Office of Initial Patent Examination correctly issued the Notice of Omitted Items in Nonprovisional Application and the notice will not be vacated. The original disclosure of the application will consists of those papers received on October 31, 2003.

Deposit account 08-0719 will be charged \$130.00 for the instant petition fee.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of October 31, 2003.

Thereafter, the application will be forwarded to the appropriate group art unit for consideration by the examiner of the preliminary amendment filed March 1, 2004.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0010.

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